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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,672	07/17/2006	Richard W. McCoy	18801-540	9573

7590
McDonald Hopkins Co
600 Superior Avenue East
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EXAMINER

VANTERPOOL, LESTER L

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

02/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,672

Applicant(s)

MCCOY ET AL.

Examiner

LESTER L. VANTERPOOL

Art Unit

3782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-6, 8, 9, 12-14, 16, 19, 21, 22 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 8, 9, 12, 14, 16, 19, 22, 26, 27, 28, 29 and 31 is/are rejected.
- 7) ☒ Claim(s) 13, 21 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 21, 2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 5, 6, 8 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson (U.S. Patent Number 4260085) in view of Pasley (U.S. Patent Number 5215234).

Jefferson discloses the cargo container (40) connectable to the vehicle (See Figure 1), the cargo container (40) comprising the bottom and the container side walls extending upwardly from the periphery of the bottom, the bottom and container side walls defining the interior compartment (42 & 44);

platform (See Figures 1 & 3) comprising the floor (28), the platform side wall (30) extending upwardly from the periphery of the floor (28), the floor (28) and platform side wall (30) defining a receiver portion adapted to nestingly support the cargo container (40) thereon.

However, Jefferson does not disclose the shoulder member projecting from the exterior surface of the platform side wall and at least one latch or lock including the catch member attached to the exterior surface of the side wall of the cargo container to engage with the shoulder member to secure the container to the platform side wall.

Pasley teaches the shoulder member (42) projecting from the exterior surface of the platform side wall (16) and at least one latch or lock (40) including the catch member attached to the exterior surface of the side wall (74) of the cargo container (22) to engage with the shoulder member (42) to secure the container (22) to the platform side wall (16) (See Column 3, lines 43 – 50).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shoulder member projecting from the exterior surface of the platform side wall and at least one latch or lock including the catch member attached to the exterior surface of the side wall of the cargo container to engage with the shoulder member to secure the container to the platform side wall as taught by Pasley with the modular cargo carrier of Jefferson in order to enhance adequate security.

Regarding claim 4, Jefferson discloses the cargo container (40) includes at least one projection (i.e. See Bolts in Figure 3) extending outwardly from the container bottom periphery (See Figure 3).

Regarding claim 5, Jefferson discloses the platform (28) includes at least one slot (36 & 38) aligned with and adapted to matingly engage the cargo container projection (i.e. See Bolts in Figure 3) when the platform (28) is nestingly supporting the cargo container (40) (See Figures 1 & 3).

Regarding claim 6, Jefferson discloses the slots (36 & 38) define the opening extending substantially through the platform wall (28).

However, Jefferson does not disclose the slots substantially through the platform side wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make slots substantially through the platform side wall, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 8, Jefferson discloses the platform (See Figures 1 & 3) and cargo container (40) further include at least one aligned drainage aperture (82) for selectively permitting fluid communication between the cargo container interior compartment and the exterior of the container (40) (See Column 3, lines 50 – 66).

Regarding claim 9, Jefferson discloses the cargo container (40) further includes the cover (46 & 48) attached to the upper end of the container side wall (See Figures 1 & 3).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson (U.S. Patent Number 4260085) and Pasley (U.S. Patent Number 5215234) as applied to claim 1 above, and further in view of LeTrudet (U.S. Patent Number 6666362).

Jefferson as modified does not disclose the cargo container side wall includes the first portion with the first exterior dimension and located proximate to the bottom of the cargo container and the second portion with the second exterior dimension and extending upward from the first portion, whereby the second exterior dimension is greater than the first exterior dimension and the exterior surface of the second portion of the cargo container side wall and the platform side wall exterior surface are substantially coplanar when the platform is nestingly supporting the cargo container.

LeTrudet teaches the cargo container side wall includes the first portion with the first exterior dimension (i.e. See Lower Bottom Portion of (30) in Figure 3) and located proximate to the bottom of the cargo container (30) and the second portion with the second exterior dimension (i.e. See Upper Half Portion of (30) in Figure 3) and extending upward from the first portion, whereby the second exterior dimension (i.e. See Upper Half Portion of (30) in Figure 3) is greater than the first exterior dimension (i.e. See Lower Bottom Portion of (30) in Figure 3) and the exterior surface of the

second portion of the cargo container side wall (32) and the platform side wall exterior surface (68) are substantially coplanar when the platform (60) is nestingly supporting the cargo container (30) (See Figures 4, 5 & 7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cargo container side wall includes the first portion with the first exterior dimension and located proximate to the bottom of the cargo container and the second portion with the second exterior dimension and extending upward from the first portion, whereby the second exterior dimension is greater than the first exterior dimension and the exterior surface of the second portion of the cargo container side wall and the platform side wall exterior surface are substantially coplanar when the platform is nestingly supporting the cargo container as taught by LeTrudet with the modular cargo carrier assembly of Jefferson in order to enhance snug and secure anchoring.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson (U.S. Patent Number 4260085) and Pasley (U.S. Patent Number 5215234) as applied to claim 9 above, and further in view of Mills (U.S. Patent Number 6467779 B1).

Jefferson does not disclose the cargo container side wall or bottom includes at least one wheel.

Mills teaches the cargo container side wall or bottom includes at least one wheel (28) (See Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cargo container side wall or bottom include at least one wheel as taught by Mills with the modular cargo carrier assembly of Jefferson in order to enhance multi-functional capabilities.

6. Claims 28 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jefferson (U.S. Patent Number 4260085) in view of Hrusoff et al., (U.S. Patent Number 5724225).

Jefferson discloses the cargo container (40) comprising the bottom and the container side wall extending upwardly from the periphery of the bottom, the bottom and container side wall defining the interior compartment (42 & 44); the platform (18) comprising the floor (28) and the platform side wall (30) extending upwardly from the periphery of the floor (28), the floor (28) and platform side wall (30) defining the receiver portion adapted to nestingly support the cargo container (40) thereon; at least one drainage aperture (82) located in the platform wall (28); slots or apertures (36 & 38) defining an opening in the wall of the platform; and at least one drainage aperture (82) located in the cargo container side wall aligned with the drainage aperture (82) of the platform (18) for selective drainage from the cargo container interior compartment (42 & 44) to the exterior of the cargo container (40) (See Figure 3).

However, Jefferson does not disclose the at least one aperture located in the platform side wall.

Hrusoff et al., teaches at least one aperture (11) located in the tray / platform side wall (7) (See Figure 7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tray (30) sidewall with an aperture for the same reasons and benefits that the apertures (36 & 38) provide to elements (112 and 82) as they extend beyond the exterior of the tray / platform.

Regarding claim 29, Jefferson discloses the accessory support assembly (18) for carrying the cargo carrier assembly and securing the cargo carrier assembly to the accessory receiver assembly secured to the vehicle (See Figure 1).

7. Claims 14, 16, 19 & 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayama (Japan Patent Number 10-211851 A) in view of Belinky et al., (U.S. Patent Number 6006973).

Hayama discloses the cargo container (12) comprising the bottom and the container side wall (See Figures 1 – 3) extending upwardly from the periphery of the bottom and at least one projection (27) extending outwardly from the container bottom periphery (See Figure 3), the bottom and container side wall defining the interior compartment (i.e. See Open container in Figure 2);

the platform (16) comprising, the floor (28), the platform side wall (30) extending upwardly from the periphery of the floor (16B), and at least one slot (i.e. See Open Gaps on Lower Portion of (16) in Figure 1) at least partially in the platform side wall

(16C), aligned with and adapted to matingly engage the projection (27), the floor (16B) and platform side wall (16C) defining the receiver portion adapted to nestingly support the cargo container (12) thereon and wherein the projection (27) of the cargo container (12) matingly engages the slot (i.e. See Open Gaps at Lower Portion of (16) in Figure 1) of the platform (16) when the platform (16) is nestingly supporting the cargo container (12) (See Figure 3).

However, Jefferson does not disclose at least one light fixture located on the platform side wall.

Belinky et al., teaches at least one light fixture (60) located on the platform side wall (16) (See Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least one light fixture located on the platform side wall as taught by Belinky et al., with the modular cargo carrier assembly of Hayama in order to alert and communicate with other drivers and or pedestrians.

Regarding claim 16, Hayama discloses the cargo container side wall (24) includes at least one latch or lock (21 & 21B) for securing the container (12) to the platform side wall (16C & 21A) (See Figures 1, 2 & 3).

Regarding claim 19, Hayama discloses the slot (i.e. See Open Gaps at Lower Portion of (16) in Figure 1) defines an opening extending substantially through the platform side wall (16C) (See Figure 1).

Regarding claim 31, Hayama discloses the accessory support assembly (14B) for carrying the cargo carrier assembly (See Figure 3) and securing the cargo carrier assembly (See Figures 1 & 3) to the accessory receiver assembly (14) secured to the vehicle (10) (See Figure 1).

8. Claims 22, 26 & 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayama (Japan Patent Number 10-211851) in view of Belinky et al., (U.S. Patent Number 6006973) as applied to claim 14 above, and further in view of Jefferson (U.S. Patent Number 4260085).

Hayama discloses the platform (16) further include at least one aligned drainage aperture (16A) for selective drainage from the cargo container interior compartment (See Figure 2) to the exterior of the container (12).

However, Hayama does not disclose the cargo container further including at least one drainage aperture.

Jefferson teaches the cargo container (40 / 42) include at least one drainage aperture (i.e. Hole of (82) in Figure 3).

It would have been obvious to one having ordinary skill at the time the invention was made to make the cargo container include at least one drainage aperture as taught by Jefferson with the modular cargo assembly of Hayama in order to enhance removing liquid from the container without opening the lid of the container.

Regarding claim 26, Hayama discloses the cargo container (12) side wall or bottom includes at least one wheel (26) (See Figures 1 & 2).

Regarding claim 27, Hayama discloses the platform floor (16B) or side wall (16C) includes at least one wheel receiving slot (i.e. See Open Gaps at Lower Portion of (16) in Figure 1) aligned with the wheel (26) when the platform (16) is nestingly supporting the cargo container (12) (See Figures 1 – 3).

Allowable Subject Matter

9. Claims 13, 21 & 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed December 21, 2009 have been fully considered but they are not persuasive.

Applicant argues, Jefferson in view of Pasley does not disclose the shoulder member or at least one latch or lock including the catch member to engage with the shoulder member.

Examiner disagrees, claim 1 does not set forth additional structural limitations to further describe and or define the shoulder member.

Therefore, since the shoulder member was not structurally and descriptively defined in claim 1, the shoulder member was given the broadest reasonable interpretation.

Claim 1 only recites: the shoulder member projecting from the exterior surface of the platform side wall and at least one latch or lock including a catch member attached to an exterior surface of the side wall of the cargo container to engage with the shoulder member to secure the container to the platform side wall.

Pasley teaches the shoulder member (42) projecting from the exterior surface of the platform side wall (16) and at least one latch or lock (40) including a catch member attached to an exterior surface of the side wall (74) of the cargo container (22) to engage with the shoulder member (42) to secure the container (22) to the platform side wall (16) (See Figure 1).

Applicant argues, Hrusoff does not correct the deficiencies of Jefferson because the tray of Hrusoff is for a laptop tray.

Examiner disagrees, in response to applicant's argument that cargo carrier of Hrusoff is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Hrusoff teaches a cargo carrier wherein the cargo is nestled within the cargo carrier as applicant invention.

Therefore, the teachings of a cargo carrier having an aperture on the side wall of the cargo carrier as taught by Hrusoff is capable of being easily transferable to other cargo carriers such as the cargo carrier of Jefferson that may or may not be connected to a vehicle.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESTER L. VANTERPOOL whose telephone number is (571)272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. L. V./

Examiner, Art Unit 3782